

1 Kris S. LeFan SBN 278611
2 *kris@lowelaw.com*
3 LOWE & LEFAN, P.C.
4 8383 Wilshire Suite #1038
5 Beverly Hills, CA 90211
6 Telephone: (310) 477-5811
7 Facsimile: (310) 477-7672

8 Hao Ni (pro hac vice)
9 *hni@nilawfirm.com*
10 NI, WANG & MASSAND, PLLC
11 8140 Walnut Hill Lane, Suite 500
12 Dallas, TX 75231
13 Telephone: (972) 331-4600
14 Facsimile: (972) 314-0900
15 Attorneys for Plaintiff
16 Hypermedia Navigation LLC

17
18
19
20
21
22
23
24
25
26
27
28
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

16 **HYPERMEDIA NAVIGATION
LLC,**

17
18 Plaintiff,

19 v.

20 **YAHOO HOLDINGS, INC.,**

21 Defendant.

Case No. 4:17-cv-03188-HSG

**ADMINISTRATIVE MOTION FOR
LEAVE TO FILE SUR-REPLY**

DATE: Thursday, November 9, 2017
TIME: 2:00 p.m.
C/R: 2, 4th Floor
JUDGE: Hon. Haywood S. Gilliam, Jr.

1 Pursuant to Local Civil Rules 7-11, Plaintiff Hypermedia Navigation, LLC
2 (“Hypermedia” or “Plaintiff”) hereby submits the following administrative motion
3 for an order granting Hypermedia leave to file the sur-reply to Defendant Yahoo
4 Holdings, Inc.’s (“Yahoo” or “Defendant”) Motion to Dismiss. Hypermedia has
5 complied with Local Rule 7-11 and sought Defendant’s stipulation to file a sur-
6 reply. Defendant has not yet confirmed whether it would oppose the Motion and as
7 such, Plaintiff files the Motion as Opposed.
8
9

10
11 **I. INTRODUCTION AND STATEMENT OF RELEVANT**
12 **FACTS**

13 Yahoo’s Reply Brief adds 8 new case cites and specifically makes new
14 invalidity arguments based on at least 4 previously undisclosed cases.
15

16 Plaintiff requests leave to file a sur-reply brief to respond to the new arguments
17 and evidence introduced by Defendant’s reply. Good cause exists to grant
18 Hypermedia’s request under the circumstances. Defendant filed its Motion to
19 Dismiss on September 11, 2017. Its Motion did not raise any of these cases or make
20 any invalidity arguments based on these cases. Defendant had more than sufficient
21 ability to do so.
22
23

24 Defendant had an obligation to come forward with all arguments on which it
25 intended to rely (and to submit all evidence) in its opening brief, to allow Plaintiff an
26 adequate opportunity to respond. Instead of complying with this obligation,
27 Defendant waited until its Reply brief to raise various new arguments, leaving
28

1 Plaintiff with no ability to respond or otherwise defend itself. *See II.A* below.
2 Plaintiff should have the opportunity to respond to these allegations, which
3 Defendant waited until the last minute to make.
4

5 For these reasons, Plaintiff respectfully requests that the Court grant leave to
6 file a sur-reply in opposition to Defendant's Motion to Dismiss. To the extent the
7 Court is inclined to grant this request, Plaintiff has attached its Sur-Reply in
8 Opposition to Defendant's Motion to Dismiss as Exhibit A to this Motion. This Sur-
9 Reply is limited to certain evidence and argument that was improperly raised for the
10 first time in Defendant's Reply.
11

12 **II. ARGUMENT**

13 **A. *In addition to the numerous new cases which could've been previously*** 14 ***presented by Yahoo, Yahoo adds new invalidity arguments based on GT*** 15 ***Nexus, Intellectual Ventures I, CyberSource, and Affinity Labs.*** 16

17 In Yahoo's Reply, pages 7, 9-11 specifically set forth new invalidity
18 arguments based on at least 3 new cases that were not previously discussed in either
19 the Motion or the Response. Defendant had ample opportunity to make invalidity
20 arguments based on these cases in its Motion but did not do so. Plaintiff is requesting
21 the opportunity to respond to these invalidity arguments which are not comparable
22 to the Asserted Claims.
23

24 **III. CONCLUSION**

1 Defendant's submission of new evidence and new invalidity arguments in its
2 Reply is improper. Plaintiff therefore requests administrative leave to submit the
3
4 Sur-Reply attached as Exhibit A to this Motion, responding to Defendant's newly
5 added invalidity arguments.
6

7 Dated: October 16, 2017

By: /s/ Hao Ni
Hao Ni

9 Attorney for Plaintiff Hypermedia
10 Navigation LLC

11
12 **CERTIFICATE OF SERVICE**

13 I certify that all counsel of record is being served on October 16, 2017, with a copy
14 of this document via the Court's CM/ECF system.

15 /s/ Hao Ni

16 _____
HAO NI

17
18
19
20
21 Dated: 10/17/2017

